

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMUEL K McDONOUGH,

Plaintiff,

V.

ROBIN SMITH, et al.

Defendant.

CASE NO. C19-1248-RAJ-BAT

ORDER TERMINATING CONSIDERATION OF REPORT AND RECOMMENDATION

Plaintiff, Sam McDonough, proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983. The Court reviewed and screened plaintiff's complaint under 28 U.S.C. § 1915A and §1915(e). In a Report and Recommendation dated September 3, 2019, the Court found and recommended the following:

[That] plaintiff's claims relating to his "federal appeal" to his criminal case be dismissed without prejudice and with leave to refile a federal habeas petition pursuant to 28 U.S.C. § 2254. The Court further finds that plaintiff's § 1983 claims related to alleged inadequate medical care provided by Department of Corrections (DOC) staff fail to state a claim as pled. However, the Court recommends that plaintiff be given an opportunity, with respect to his § 1983 claims, to amend his complaint to cure the deficiencies described [in the remainder of the Report and Recommendation]. The Court further recommends that (1) if plaintiff fails to file an amended complaint, that the case be dismissed pursuant to 28 U.S.C. § 1915A and §1915(e) for failure to state a claim; and (2) if plaintiff does file an amended complaint, that the case be referred back to Hon. Brian A. Tsuchida for further proceedings.

1 Dkt. 8.

2 Plaintiff subsequently filed a separate 28 U.S.C. § 2254 petition in this court challenging
3 the alleged constitutional violations related to his conviction and sentence and seeking release
4 from custody. *See McDonough v. State of Washington*, 19-cv-1501-MJP-BAT. Plaintiff has also
5 now filed an amended §1983 civil rights complaint in the instant action related only to his
6 conditions of confinement claims. Dkt. 10. As such, it appears plaintiff has complied with all of
7 the recommendations contained in the Court's Report and Recommendation (Dkt. 8).

8 Accordingly, the Court directs the Clerk to terminate consideration of the Report and
9 Recommendation (Dkt. 8) as the recommendations contained therein are now moot. The Court
10 will proceed with screening of the amended complaint (Dkt. 10).

11 DATED this 7th day of October, 2019.

12 
13 BRIAN A. TSUCHIDA
14 United States Magistrate Judge